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LETTER TRANSMITTING SUGGESTED REVISIONS TO THE DRAFT COVENANT  
DEFERRAL REQUEST MILLINGTON SUPPACT TN

2/3/1999

STATE OF TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION



State of Tennessee  
Department of Environment and Conservation  
14<sup>th</sup> Floor, L&C Tower  
401 Church Street  
Nashville, Tennessee 37243-1530

February 3, 1999

The Honorable George Harvell, Jr.  
Mayor, City of Millington  
7930 Nelson  
P.O. Box 247  
Millington, TN 38083-0247

RE: Early Transfer of Portions of Naval Support Activity to the city of Millington

Dear Mayor Harvell:

Enclosed are the State of Tennessee's suggested revisions to the draft Covenant Deferral Request (CDR) for the Naval Support Activity Mid-South with all enclosures. I have also provided a copy to Representative Tanner's office. Please call me at (615) 532-0144 if you have any questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "David L. Harbin".

David L. Harbin  
Assistant General Counsel



State of Tennessee  
**Department of Environment and Conservation**  
14<sup>th</sup> Floor, L&C Tower  
401 Church Street  
Nashville, Tennessee 37243-1530

February 2, 1999

Stephen Beverly, Esq.  
Office of Counsel, Southern Division  
Naval Facilities Engineering Command  
2155 Eagle Drive  
North Charleston, South Carolina 29419-9010

RE: Millington Naval Air Station  
Responses to draft Covenant Deferral Request

Dear Mr. Beverly:

The State has reviewed the Navy's latest draft of the Covenant Deferral Request (CDR) for the Naval Support Activity Mid-South. We appreciate the Navy's efforts to accommodate the concerns we discussed at our December meeting. Although I do not anticipate any additional revisions, I have not received comments from everyone reviewing the draft CDR. If I receive any additional comments, I will forward them to you as soon as possible.

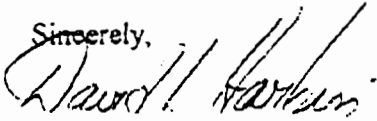
The State's suggested revisions are attached. The revisions are marked (strike and underline). We consider these revisions to be minor as they only reflect the Navy's obligations required by federal law. In short, these suggested revisions are:

1. The State is unwilling to waive or otherwise limit any of its claims, authorities or rights it may have against the Navy. As the State has indicated before, the State shall hold the Navy liable for any and all response actions on the property under applicable state and federal laws including CERCLA. Any arrangement that the Navy has with the City of Millington is independent of the Navy's statutory clean up obligations.
2. Pursuant to CERCLA, Executive Order # 12580 and EPA regulations, the Department of Defense, as the designated federal Natural Resource Trustee, is required to carry out an assessment of any natural resource damages and notify the State of such damages. Therefore, instead of insisting the Navy fund an assessment to be conducted by the State, we are simply asking the Navy to

acknowledge its obligation to carry out an assessment. I have enclosed Executive Order # 12580 and the EPA regulations for your information. Additionally, I have enclosed the Defense Distribution Depot Memphis Federal Facility Agreement that contains similar NRDA wording as we are suggesting to be included in this CDR.

Please call me at (615) 532-0144 if you have any questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "David L. Harbin".

David L. Harbin  
Assistant General Counsel

cc: Chad Jenkins, Office of U.S. Representative Tanner

**COVENANT DEFERRAL REQUEST  
FOR  
NAVAL SUPPORT ACTIVITY, MID-SOUTH  
MILLINGTON, TENNESSEE**

**I. Background**

In accordance with actions taken pursuant to the Defense Base Closure and Realignment Act of 1990, the former Naval Air Station (NAS), Memphis, has been operationally closed and realigned into the Naval Support Activity (NSA) Mid-South. This realignment made the northern portion of the former NAS Memphis available for community reutilization. Both environmental investigation and clean-up activities have been ongoing onboard the former NAS Memphis since 1983. However, because certain response activities remain to be completed on portions of the property being made available for community reuse, federal law requires that the Governor of the State of Tennessee approve any proposed deed transfer of those areas to any non-federal, non-potentially responsible party.

Section 120(h)(3)(C) of the Comprehensive Response, Compensation and Liability Act of 1980 (CERCLA) (42 U.S.C. 9601 et. seq.) sets forth the specific conditions upon which State approval of early (i.e., pre-final remediation complete) transfers of federal facilities should be granted. This request is intended to facilitate the granting of such approval by Governor Sundquist and is consistent with Department of Defense (DoD) guidance for the early transfer of DoD facilities like NSA Mid-South which are not on the Environmental Protection Agency's (U.S. EPA's) National Priorities List (NPL). The format used comes from guidance developed by U.S. EPA for the early transfer of federal NPL facilities.

Approval of this deferral request by Governor Sundquist will facilitate the development and execution by the Navy of a ***Finding Of Suitability for Transfer (FOST)***. The ***FOST*** will address all environmental matters affecting the overall suitability of the property and facilities intended for transfer to include those matters not specifically required by law or DoD policy to be encompassed under this deferral request (e.g., presence of asbestos containing materials or lead-based paint in buildings or any sites with residual petroleum contamination).

**II. Description of Property to be Transferred by Deed**

The entire property to be deed transferred (only portions of which have any hazardous substance contamination) comprises approximately 1,858 acres of land and roughly seventy (70) buildings or other structures situated within the northern portion of NSA Mid-South. It is contemplated that this property will be conveyed through two mechanisms, a Public Benefit Conveyance (PBC) of 537 acres known as the "Airfield Parcel" to the City of Millington for use by the Millington Municipal Airport Authority and 1,321 acres known as the "Non-Airfield Parcel" to the City of Millington for use by the

Millington Industrial Development Board, through an Economic Development Conveyance (EDC). The areas of hazardous substance contamination on both parcels are depicted in ***Exhibit A to this deferral request***. Land surveys will be conducted prior to the deed transfer of either parcel to delineate these areas from those ***uncontaminated areas also depicted in Exhibit A which fall outside*** the scope of this ***deferral request***.

The Airfield Parcel contains the primary runway; taxiways; clear zones; aircraft parking apron; two aircraft hangars, and numerous other airfield support structures in addition to open land. The Non-Airfield Parcel surrounds the Airfield Parcel, and consists of open land, recreational facilities, as well as various other facilities and buildings which supported the operation of the former Air Station. A complete listing of the facilities located on each parcel is included in *Environmental Baseline Survey for Transfer – June 1997* (EBST) prepared to assess the environmental condition of both parcels. That document, which is currently being updated to reflect the latest site data collected, will be provided to the City of Millington prior to deed transfer.

### **III. Nature and Extent of Hazardous Substance Contamination**

The investigation of hazardous substance contamination at NSA Mid-South has revealed primarily one concern, that being solvent contamination, chiefly trichloroethylene (TCE), in portions the fluvial deposits aquifer which underlie the facility. ***While the lateral extent of this contamination has yet to be fully defined, there is currently no evidence of any off-site contaminant migration.*** The fluvial deposits aquifer has not previously been used as a source of drinking water for NSA Mid-South. Based on all data collected to date, there is no basis for concluding that the underlying Memphis aquifer, a partial source for NSA Mid-South's potable water, has been impacted by such contamination. ***This data can be found in the groundwater well sampling and monitoring data technical reports and memoranda prepared by the Navy for this facility. This same data further*** indicates that the Cockfield/Cook Mountain Formations confining layer, which is present between the fluvial deposits aquifer and the deeper Memphis aquifer, has historically and should in the future, adequately protect the Memphis aquifer from the downward movement of ***any contamination in the fluvial deposits aquifer.***

The highest concentration of TCE contamination detected in the fluvial deposits aquifer was 3,300 parts per billion (ppb). The majority of samples analyzed indicate concentrations of less than 100 ppb. The U.S. EPA established Maximum Contaminant Level (MCL) for TCE in drinking water is 5 ppb. Although the fluvial deposits aquifer has not historically been used as a drinking water source, it is classified under Tennessee regulations as a drinking-water aquifer making the 5 ppb MCL the applicable cleanup goal for this aquifer. The random distribution of the TCE contamination discovered, coupled with site-specific hydrogeology, appear to limit the range of practical remedial alternatives to address such contamination. However, those alternatives still need to be fully evaluated. The areas of known hazardous substance contamination in groundwater are also reflected in ***Exhibit A***.

The EBST prepared by the Navy classified the various portions of the surplus property and improvements on NSA Mid-South into one of seven environmental condition of property classifications as follows:

- **Category 1 / White** - Areas where no storage, release or disposal of hazardous substances or petroleum products has occurred (including no migration of these substances from adjacent areas).
- **Category 2 / Blue** - Areas where only the storage of hazardous substances or petroleum products has occurred (but where no release, or disposal, or migration from adjacent areas has occurred).
- **Category 3 / Light Green** - Areas where storage, release, disposal, and/or migration of hazardous substances or petroleum products has occurred but at concentrations that do not require a removal or remedial action.
- **Category 4 / Dark Green** - Areas where storage, release or disposal and/or migration of hazardous substances or petroleum products has occurred, and all removal or remedial actions to protect human health and the environment have been taken.
- **Category 5 / Yellow** - Areas where release or disposal of hazardous substances has occurred and removal or remedial actions are underway, but all required remedial actions have not yet been taken.
- **Category 6 / Red** - Areas where either a release of hazardous substances has occurred, but required actions have not yet been implemented.
- **Category 7 / Grey** - Areas that are unevaluated or require additional evaluation.

The following table summarizes the current status of those particular sites where hazardous substance (HS) investigative and/or remedial measures still need to be completed *and their corresponding property condition color designation*.

Site	Description	Site Status / Color Designation
SWMU 5	Former Aircraft Fire Fighting Training Area (Non-Airfield Parcel)	<p><u>Status:</u> Portion of fluvial deposits aquifer is contaminated with carbon tetrachloride. This site will be further investigated and then incorporated into the AOC A Corrective Measures Study as necessary.</p> <p><u>Color Designation:</u> Red</p>
Turkey Shoot	Former VFW Turkey Shoot Area (Non-Airfield Parcel)	<p><u>Status:</u> Surface soil contaminated with lead, which poses a possible ecological risk to the American Robin and short-tailed shrew (or similar species). Removal of lead contaminated soil currently scheduled for <b>second quarter of FY1999</b>.</p> <p><u>Color Designation:</u> Red</p>
AOC A	Northside Fluvial Deposits Groundwater (area of contamination in both Airfield and Non-Airfield Parcels, primarily around aircraft parking aprons).	<p><u>Status:</u> Portion of fluvial deposits aquifer contaminated with chlorinated solvents. Fluvial deposits aquifer contamination has been incorporated into the AOC A Corrective Measures Study (CMS) currently underway.</p> <p><u>Color Designation:</u> Red</p>

#### IV. Analysis of Intended Future Land Use

The Millington Base Reuse Committee (Local Redevelopment Authority), has a Reuse Plan, Base Reuse & Economic Development Plan, Memphis Naval Air Station, Millington, Tennessee, Final Report, (29 August 1995), which will serve as the blueprint for community reuse of the parcels in question and their associated facilities. This plan calls for the use of the former airfield as a municipal airport, which will serve as one component of a larger combined industrial / business / air park. The goal of the Committee's Reuse Plan is to maintain the option of operating an airport, while providing diversity to support additional job-generating industrial activities, should the airport later prove to be economically infeasible to operate. With the exception of one ***parcel located*** north of the former Naval Hospital ***which is distant from the above identified sites and not covered under this deferral request***, residential reuse is not planned for any portion of the ***surplus property*** to be conveyed ***to the City for reuse***.

#### V. Results of Risk Assessments Performed

Risk assessments have been performed in conjunction with investigative activities conducted at each Solid Waste Management Unit (SWMU) or Area of Concern (AOC) with identified hazardous substance contamination. The results of these assessments may be summarized as follows:

1. **SWMU 5:** Potential future human health risks from the hazardous substance contamination associated with this site would be from exposure to groundwater from the fluvial deposits aquifer beneath the site. There is currently no direct exposure pathway for such contamination because there are no water supply wells on the property which utilize the fluvial deposits aquifer. All water used for drinking, irrigation or industrial process purposes is currently obtained through the Navy's potable water system which draws from the Memphis and Ft. Pillow aquifers. It is believed that any risk associated with the presence of such subsurface contamination may effectively be managed through the utilization of appropriate deed restrictions to prohibit the installation of shallow water supply wells for the extraction or usage of groundwater from the fluvial deposits aquifer unless subsequent testing shows that any remaining contamination has fallen to levels determined to be safe for human consumption (i.e., below the applicable MCL). These restrictions will apply to known areas of groundwater contamination and within a buffer zone to take into account any movement of contamination laterally down gradient over time. Although separately considered, ecological risk was not identified as a concern at this site.
2. **Former VFW Turkey Shoot Area:** The risk assessment conducted for this site focused on both those potential human health and ecological risks associated with the presence of lead shot in soils. Residual lead concentrations were discovered in excess of the U.S. EPA's lead action level for residential land usage of 400 milligram per kilogram (mg/kg) but were below calculated human health risk associated with assumed commercial / industrial usage of this property. The assessment conducted also noted that the bio-absorption of lead is generally limited when consumed in shot form. The only ecological risk associated with the contamination found at this site was potential



adverse impact to the American Robin and short-tailed shrew (or similar species) which might consume the lead shot. That assessment was based upon the highest lead concentration identified on any portion of the site and hence, may not be truly representative of actual ecological risk. Nonetheless, it is the Navy's intent to eliminate potential human health and/or ecological risk by removing shot and lead-contaminated soil below 400 mg/kg. ***Removal activities will commence after the Navy has obtained Tennessee Department of Environment and Conservation (TDEC) approval of the removal workplan recently submitted in connection with this site.***

3. AOC A: The risk assessment for this site focused on groundwater in the fluvial deposits beneath and extending out from the aircraft apron area situated on the Airfield Parcel where chlorinated solvent contamination has been discovered. As reflected in ***Exhibit A***, groundwater contamination associated with this site also extends partly beneath the Non-Airfield Parcel.

As is the case with SWMU 5, there is currently no direct exposure pathway for the groundwater contamination at this site because there are no water supply wells on the property which utilize the fluvial deposits aquifer. Similarly, all water used for drinking or other purposes is supplied through the Navy's potable water system which draws from the Memphis and Ft. Pillow aquifers. It is believed that any risk associated with the presence of groundwater contamination at this site may effectively be managed through the utilization of appropriate deed restrictions to prohibit the installation of shallow water supply wells without prior Government approval or the future usage of such ground waters unless subsequent testing shows that any remaining contamination has fallen to levels safe for human consumption. All groundwater restrictions will apply to known areas of contamination and within a buffer zone to take into account any movement of contamination laterally down gradient over time. Upon evaluation, ecological risk was not identified as a concern at this site

#### VI. Response / Corrective Action and O & M Requirements

The *Corrective Action Management Plan (CAMP)* for NSA Mid-South, Revision 4, dated 23 October 1997, provides the strategy, schedule, and timeline for implementing the corrective action program. In summary, the CMS for the fluvial deposits groundwater is scheduled to be completed in 1999, with remedy implementation (presumed to be natural attenuation) to follow. Operation and Maintenance / Long-Term Monitoring will follow as necessary. The projected timeline for the selection and completion of remediation, as taken from the CAMP and updated, is attached as ***Exhibit B to this deferral request***.

#### VII. Contents of Deed / Transfer Agreement

As required by CERCLA ***Section 120(h)(3)(A)***, the ***Navy shall include the following language*** in the quitclaim deed(s) or other transfer document(s) which ***shall*** convey title to the Airfield and Non-Airfield parcels to the City of Millington as Grantee. ***The Navy may make minor, non-substantive changes to such language, but will advise the appropriate TDEC representatives of the of any such changes prior to closing.***

a. Notice:

In accordance with Section 120(h)(3)(A)(i) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended, (42 U.S.C. 9620(h)(3)(A)(i) ), you are advised that ***Exhibit C*** to this deed ***summarizes pertinent information from the Environmental Baseline Survey for Transfer - June 1997 (EBST)*** prepared to assess the overall environmental condition of the property which provides all available information based upon a complete search of agency files of those hazardous substances known to have been stored for one year or more, released or disposed of on the property, to include if known, ***the type and quantity of such hazardous substances***, the date such storage, release or disposal took place and a description of all remedial action(s) taken.

b. Covenant:

In accordance with Section 120(h)(3)(A)(ii) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended, (42 U.S.C. 9620(h)(3)(A) (ii) ), the United States warrants that it shall take any additional remedial action found to be necessary with regards to any hazardous substance(s) remaining on the property at the time of conveyance. This covenant shall not apply in any case in which any response action required is the result of an act or failure to act of the Grantee or its successors and assigns which results in a release of hazardous substances after the date of conveyance.

c. Access:

In accordance with Section 120(h)(3)(A)(iii) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended, (42 U.S.C. 9620(h)(3)(A) (ii) ), the United States reserves the right to access all portions of the Property for future environmental investigation, remediation or other corrective actions. This reservation includes the right of access to and use of, to the extent permitted by law, available utilities at reasonable cost to the United States. These rights shall be exercisable in any case in which a remedial action, response action or corrective action is found to be necessary after the date of conveyance of the Property, or in which access is necessary to carry out a remedial action, response action or corrective action on adjoining property. Pursuant to this reservation, the United States and the State of Tennessee and their officers, agents, employees, contractors and subcontractors shall have the right (upon reasonable notice to the Grantee or the then owner and any authorized occupant of the Property) to enter upon the Property and conduct investigations and surveys, to include drillings, test-pitting, borings, data and record compilation, and other activities related to environmental investigation and to carry out remedial or removal actions as required or necessary under applicable authorities, including but not limited to monitoring wells, pumping wells, and treatment. Any such entry, including such activities, responses or remedial actions, shall be coordinated with the Grantee or its successors assigns, and tenants and shall be performed in a manner which minimizes interruption with Grantee's activities on the property.

d. ~~Response Action Assurances~~Other Provisions:

~~In accordance with CERCLA Section 120(h)(3)(C),~~ The following ~~response action assurance provisions~~ will also be included in the quitclaim deed(s) or other transfer document(s) which **shall** convey title to the Airfield and Non-Airfield parcels to the City of Millington as Grantee. **The Navy may make minor, non-substantive changes to such provisions, but will advise the appropriate TDEC representatives of any such changes prior to closing.**

1. **Grantee covenants and agrees for itself and its lessees, licensees, successors or assigns to any interest to the property, or part thereof, that use of the property shall be limited to nonresidential, industrial uses to include any office or similar use incidental to industrial uses if such incidental use is permitted by applicable regulatory authorities without requiring further environmental remediation beyond that required for industrial use of the property. Prohibited residential uses include, but are not limited to, any child care, pre-school, playground or any form of housing.**

**In the event the Grantee or its lessees, licensees, successors or assigns to any portion of the property desire to use the property for any use other than industrial use, then Grantee or its lessees, licensees, successors or assigns shall perform all additional environmental remediation required by law or applicable regulatory authorities for such other uses and shall further comply with all laws, rules, regulations and ordinances pertaining thereto, including but not limited to zoning requirements and the requirements of all applicable regulatory authorities. All costs associated with any such additional environmental remediation necessary for other than industrial use shall be the sole responsibility of the owner, its lessees, licensees, successors or assignees, without cost whatsoever to the Grantor.**

2. **Grantee covenants and agrees for itself, its lessees, licensees, successors or assigns to any interest to the property, or part thereof, that it will (i) provide written notice to the United States of its intent to use the property for anything other than industrial use (ii) provide a description of its plans for undertaking any environmental investigation and/or cleanup activities necessary to permit such a change in land usage, and (iii) ensure that such activities will not conflict with any ongoing or future remedial activities to be taken by the United States or in any way serve to adversely affect any remedial remedies previously put in place by the United States on the property.**
3. **Grantee covenants and agrees for itself and its lessees, licensees, successors or assigns to any interest to the property, or part thereof that it shall not construct or permit to be constructed any well, and shall not extract, utilize, consume or permit to be extracted, any water from the aquifer below the surfaces of the ground within the boundary of the Property for the**

purpose of human consumption, or other use, unless such groundwater has been

tested and found to meet applicable environmental standards for human consumption, or such other use, and such owner or occupant shall first have obtained written approval of the United States. The costs associated with obtaining use of such water, including, but not limited to, the costs of permits, studies, analysis or remediation, shall be the sole responsibility of the Grantee, its successors and assigns, without cost whatsoever to the United States.

4. ***Grantee covenants and agrees for itself and its lessees, licensees, successors or assigns to any interest to the property, or part thereof*** that it shall not excavate or conduct any other soil disturbing activities within those areas of known or suspected surface or subsurface soil contamination identified in the Environmental Baseline Survey for Transfer (EBST) provided to the Grantee without prior written approval of the United States. Any costs associated with the need to obtain any permits or to utilize personal protective equipment or to undertake other environmental or worker health and safety measures in compliance with applicable laws or regulations when dealing with potentially contaminated soils in such areas shall be the sole responsibility of the Grantee, its lessees, licensees or successors and assigns, without cost whatsoever to the United States.
5. ***Grantee covenants and agrees for itself, its lessees, licensees, successors or assigns to any interest to the property, or part thereof, that it shall comply with the provisions of any health and safety plan put into effect by the United States in connection with any ongoing or future environmental investigative and/or remedial activities to be undertaken by the United States on the property.***
6. ***Grantee covenants and agrees for itself and its lessees, licensees, successors or assigns to any interest to the property, or part thereof,*** that it shall not hinder or prevent the United States from constructing, upgrading, operating, maintaining and monitoring any groundwater treatment facilities and groundwater monitoring network or engage in any activity that will disrupt or hinder further remedial investigation, response actions or oversight activities on the Property or adjoining property required.
7. ***Grantee covenants and agrees for itself and its lessees, licensees, successors or assigns to any interest to the property, or part thereof that it shall not interfere with any future effort(s) by the Navy to obtain State and/or U.S. EPA concurrence on the scope of any proposed site investigative or remedies measures intended to fulfill its CERCLA or HSWA permit related environmental cleanup obligations on the property. Grantee, its lessees, licensees, or successors and assigns shall not be precluded under this provision from providing oral or written comments on any proposed site investigative efforts or remedies to the NSA Mid-South Restoration Advisory Board (RAB) at any scheduled RAB meeting or to the BRAC Cleanup Team (BCT) via the Navy representative to that team or to formally comment on any proposed modifications to the Navy's HSWA permit during any associated public comment period.***

8. **Grantee covenants and agrees for itself and its lessees, licensees, successors or assigns to any interest to the Property, or part thereof that it shall provide written notice to the United States of any subsequent sale, assignment or lease of the property, or any portion thereof, and provide contact information concerning the new owner or occupant.**
9. The United States shall take all necessary response actions with regards to any hazardous substances remaining on the property at the time of deed conveyance. A projected work completion schedule associated with such actions is included as **Exhibit B**, and will be reviewed by the Navy, U.S. EPA and the State of Tennessee on an annual basis and updated as necessary as part of the annual update of the Corrective Action Management Plan (**CAMP**) for this facility.
10. The **Navy** shall submit on an annual basis through established channels, appropriate budget requests to the Director of the Office of Management and Budget that adequately address those agreed upon schedules for investigation and completion of all necessary response action reflected in annual updates to the CAMP, subject to future congressional authorizations and appropriations. The currently projected budget requirements for the completion of all required response actions are as follows:

<u>Fiscal Year</u>	<u>Projected Cost</u>	<u>Funded Activity</u>
1999	\$ 1,297,000	Remedial Design Implementation
2000	\$ 591,000	Remedial Design Implementation
2001	\$ 188,000	Long-Term Monitoring
2002	\$ 155,000	Long-Term Monitoring
2003-2015	\$ 105,000/yr	Long-Term Monitoring
Total	\$ 3,496,000	

11. When all response action necessary to protect human health and the environment with respect to any substance remaining on the property on the date of conveyance has been taken, the United States shall execute and deliver to the transferee an appropriate document containing a warranty that all such response action has been taken.

#### **VIII. Natural Resources Restoration and Damage Assessment**

##### **a. Reservation of Rights Acknowledgement:**

It is understood that State concurrence with this request for **covenant deferral** shall not serve to trigger the Statute of Limitations provided for under CERCLA Section 113(g)(1),

nor otherwise ~~serve as a legal bar to the future assertion of release DoD from any liability or waive any claim by that the State of~~ Tennessee may have pursuant to any provision of State or federal law, including any claim for damages occasioned by any injuries to, destruction of, or loss of any natural resource as may have resulted from the Navy's past use and operation of NAS

Memphis to that such resources shall fall under the State's trusteeship as a Natural Resource under CERCLA and the National Contingency Plan (NCP).

**b. Navy Responsibilities**

**Notification**

Consistent with requirements of Section 104(b)(2) of CERCLA and Section 2(e)(2) of Executive Order 12580, within sixty (60) days of approval of this deferral request, the Navy will formally notify TDEC as the designated Natural Resource Trustee representative for the State of Tennessee, of any and all potential damages to resources resulting from the past release or disposal of CERCLA hazardous substances on or from NSA Mid-South.

DoD acknowledges that it is a trustee for natural resources present at NSA Mid-South. In this way, DoD shall notify the appropriate Federal and State natural resource trusts required by Section 104(b)(2) of CERCLA and Section 2(e)(2) of Executive Order 12580. DoD is also responsible for assessing damages (injury, destruction of resources) resulting from releases of hazardous substances on Mid-South, and for implementing measures designed to mitigate, and/or compensate for, such damages. These authorities are vested in DoD (as specified in Executive Order 12580) pursuant to Section 107(f) of CERCLA and Section 311(f) of the Federal Water Pollution Control Act.

**b. Support Restoration Advisory Board**

Consistent with policy, the Navy has previously established a Restoration Advisory Board for NSA Mid-South. The purpose of RAB establishment was to provide for cooperation between the Navy, TDEC, the U.S. EPA, and local community representatives, on proposed site / resource restoration related activities at NSA Mid-South. Subject to obtaining appropriated funds for such purposes, the Navy agrees to continue to support RAB activities until such time purposes for use of that body have been satisfied. The Commissioner shall be provided advance timely notice of RAB activities including proposed decisions and other significant functions.

**c. Trusteeship**

To the extent possible, the Navy shall work with the appropriate TDEC representatives on a ongoing basis to assist in characterizing the scope, nature, and extent of the resource injuries which may have occurred at NSA Mid-South. Such cooperation shall be offered and rendered in the context of the Navy fulfilling its investigation and cleanup responsibilities under CERCLA and the facility's permit. One of the objectives of such cooperation will be to minimize the total resource damage assessment costs which might otherwise have been incurred by the State in order to pursue a claim for natural resource damage under CERCLA Section 107 (42 U.S.C. Section 9607).

**IX. Transferee Response Action Assurances and Agreements:**

~~*It is not anticipated that the Grantee will assume any obligation to conduct response actions on the property associated with hazardous substances remaining on the property at the time of conveyance. Should this change, the Navy shall provide the U.S. EPA and TDEC with copies of all documentation evidencing that the Transferee is legally obligated to conduct the required response actions consistent with CERCLA and the Navy's HSWA corrective action obligations. [Put back in the Navy's original CDR language as provided in the Navy's first draft CDR]*~~ The Grantee will not be assuming any obligations to conduct response actions on the property associated with hazardous substances remaining on the property at the time of conveyance. The Navy shall retain responsibility for the completion of all necessary response actions consistent with CERCLA and its RCRA/HSWA permit obligations.

**X. Effect of Covenant Deferral Request:**

Nothing in this Covenant Deferral Request shall be construed to alter the Navy's obligations under applicable federal or state law to complete all response actions necessary to permit the industrial reuse of this property in accordance with the City of Millington's Reuse Plan. *It is not expected that approval of this deferral request and subsequent transfer of the property would serve to substantially delay necessary response action(s) on the property.*

**XI. Responsiveness Summary:**

As reflected in Exhibit D, on \_\_\_\_\_, public comment was solicited on the Navy's draft covenant deferral request via newspaper publication of an availability notice. The Navy (did / did not) receive any comments from the general public. Comments were received from both U.S. EPA and TDEC. All comments received were considered in the preparation of this final request, and are included in Exhibit E. The Navy's responses to any unresolved comments are included in Exhibit F.

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**Suitability Declaration**

As the cognizant U.S. Department of Defense (DoD) official authorized to make such determination, I, the undersigned, have determined that under the proposed land-use conditions and *restrictions to be implemented* that the above described property is suitable for the intended reuse *and that to allow such uses would be consistent with future protection of human health and the environment.*

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Date

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WILLIAM J. CASSIDY, JR.  
Deputy Assistant Secretary of the Navy  
(Conversion And Development)